

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE: ANDREW M. BROWNE

: CASE NO: 14-32453

:

: Chapter 13

:

Debtor(s)

: JUDGE: GUY R. HUMPHREY

**CHAPTER 13 TRUSTEE'S OBJECTION TO NOTICE OF MORTGAGE PAYMENT
CHANGE FILED BY CREDITOR U.S. BANK TRUST, NATIONAL ASSOCIATION and
REQUEST FOR ORDER REQUIRING CREDITOR TO PROVIDE AN ESCROW
ANALYSIS PURSUANT TO WAIVER OF UNNOTICED ESCROW SHORTAGE or
REFUND OF ESCROW SURPLUS (DOC. 57)**

Now comes the Chapter 13 Trustee and objects to the Notice of Mortgage Payment Change filed by Creditor U.S. Bank Trust, National Association and requests an Order requiring Creditor to provide an escrow analysis pursuant to waiver of unnoticed escrow shortage or refund of escrow shortage (Doc. 57). In support of his objection and request for order, the Trustee states as follows:

The herein case filed on July 10, 2014 and was confirmed on October 7, 2014. The proof of claim (Court claims #4 and 6, Trustee claims #1, 15, 19) was filed on October 30, 2014 by Nationstar Mortgage, LLC. The plan was modified to pay the mortgage as a conduit and cure arrears through the plan on September 14, 2016. The claim was assigned to U.S. Bank Trust, National Association in July 25, 2018. This is the first Notice of Mortgage Payment Change (NMPC) filed to date.

It is noted that as of the July 1, 2019 Trustee disbursement, the pre-petition arrears claim has been paid \$15,582.10 to date and there remains \$957.30 to be paid. It does appear from the escrow history for the period September 2018 through June 2019 that the creditor did credit the escrow account for payment of the pre-petition arrears.

The Trustee is unable to determine if the escrow account has been properly maintained during the pendency of the case due to Creditor's failure to timely file any escrow analyses pursuant to B.R. 3002.1(a). The escrow analysis as filed indicates that there is a surplus in the escrow account of \$2078.54. The Trustee submits that this amount may actually be much higher due to the Creditor's failure to timely notice the escrow analyses.

It is the Trustee's position that due to this failure to timely file escrow analyses, the Creditor must waive any unnoticed shortage and return any surplus to the Trustee as property of the estate. The Trustee submits that the monthly mortgage payment should remain set at \$1191.17 beginning with the August 2019 disbursement cycle.

WHEREFORE, the Chapter 13 Trustee moves the Court for an Order denying the notice of mortgage payment change, requiring the Creditor to provide an escrow analysis pursuant to waiver of unnoticed escrow shortage or refund of escrow surplus and setting the monthly mortgage payment at \$1191.17 beginning with the August 2019 disbursement.

Respectfully submitted,

/S/ Jeffrey M. Kellner

JEFFREY M. KELLNER 0022205
CHAPTER 13 TRUSTEE
131 N. Ludlow St., Suite 900
Dayton, OH 45402
(937) 222-7600 Fax: (937) 222-7383
email: chapter13@dayton13.com

14-32453

**NOTICE OF CHAPTER 13 TRUSTEE'S CHAPTER 13 TRUSTEE'S OBJECTION TO
NOTICE OF MORTGAGE PAYMENT CHANGE FILED BY CREDITOR U.S. BANK
TRUST, NATIONAL ASSOCIATION and REQUEST FOR ORDER REQUIRING
CREDITOR TO PROVIDE AN ESCROW ANALYSIS PURSUANT TO WAIVER OF
UNNOTICED ESCROW SHORTAGE or REFUND OF ESCROW SURPLUS (DOC. 57)**

Jeffrey M. Kellner, Chapter 13 Trustee, has filed papers with the Court **objecting to the notice of mortgage payment change (DOC. 57).**

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion or objection, then on or before **thirty (30) days from the date set forth in the certificate of service for the objection**, you must file with the Court a response explaining your position by mailing your response by ordinary U.S. Mail to the U.S. Bankruptcy Court, Southern District of Ohio, 120 W. Third St., Dayton, Ohio 45402 OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF system or by 2) regular U.S. Mail to:

Andrew M. Browne, 357 Vindale Dr., Beavercreek, Ohio 45440
Jeffrey R. McQuiston, 130 W. Second St., Ste. 1818, Dayton, Ohio 45402
Jeffrey M. Kellner, Chapter 13 Trustee, 131 N. Ludlow St., Dayton, Ohio 45402
Office of the U.S. Trustee, 170 North High St., Suite 200, Columbus, Oh 43215

If you or your attorney do not takes these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

14-32453

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **CHAPTER 13 OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE FILED BY CREDITOR U.S. BANK TRUST, NATIONAL ASSOCIATION and REQUEST FOR ORDER REQUIRING CREDITOR TO PROVIDE AN ESCROW ANALYSIS PURSUANT TO WAIVER OF UNNOTICED ESCROW SHORTAGE or REFUND OF ESCROW SURPLUS (DOC. 57)** was served **electronically** on the date of filing through the Court's ECF System on all ECF participants registered with the court and by **ordinary U.S. Mail** on July 15, 2019 addressed to:.

Andrew M. Browne
357 Vindale Dr.
Beavercreek, Ohio 45440

U.S. Bank Trust, National Association (1n3, 16)
c/o BSI Financial Services
1425 Greenway Drive, Ste. 400
Irving, Texas 75038

Michelle R. Ghidotti-Gonsalves (1n4, 17)
Ghidotti Berger, LLP
1920 Old Tustin Ave.
Santa Ana, California 92705

Gagan Sharma, CEO (20)
BSI Financial Services, Inc.
1425 Greenway Drive, Suite 400
Irving, Texas 75038

Andrew Cecere, CEO/Pres (21)
U.S. Bank Trust, N.A.
300 East Delaware Avenue
8th Floor
Wilmington, Delaware 19809

Jeffrey M. Kellner, Trustee By /S/ Jeffrey M. Kellner

Certified Mail Certificate of Service

14-32453

I hereby certify that a copy of the attached was served by electronic service or was mailed by certified mail to each of the following on the date of the electronic filing.

GAGAN SHARMA, CEO
BSI FINANCIAL SERVICES, INC.
1425 GREENWAY DRIVE, SUITE 400
IRVING, TX 75038

By Certified Mail Number: (Chapter 13 Use Only)

JEFFREY M KELLNER By /s/ JEFFREY M KELLNER

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Certified Mail Certificate of Service

14-32453

I hereby certify that a copy of the attached was served by electronic service or was mailed by certified mail to each of the following on the date of the electronic filing.

ANDREW CECERE, PRES/CEO
US BANK TRUST NA
300 EAST DELAWARE AVENUE, 8TH FLOOR
WILMINGTON, DE 19809

By Certified Mail Number: (Chapter 13 Use Only)

JEFFREY M KELLNER By /s/ JEFFREY M KELLNER

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